



STATE OF CALIFORNIA
FRANCHISE TAX BOARD - Legal Branch
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July 13, 1998

FTB NOTICE 98-11

SUBJECT: Settlement of Civil Tax Matter Disputes - Updated and Revised Procedures

FTB Notice 92-3, issued on August 14, 1992, FTB Notice 92-8, issued on September 9, 1992, and FTB Notice 97-3, issued on April 1, 1997, provided background and general information as to the Franchise Tax Board's settlement authority and the settlement process itself. As a result of statutory changes, and the revision of certain procedures relating to settlements, this Notice is intended to update, revise and supersede those prior Notices.

Revenue and Taxation Code §19442 authorizes the Franchise Tax Board to settle civil tax matters in dispute that are the subject of protests, appeals, or refund claims. The Franchise Tax Board's Settlement Bureau is generally responsible for the negotiation of settlements of civil tax matters in dispute. The settlement of litigation cases is handled outside of the Settlement Bureau. Audits in progress are also not included in the settlement program.

The purpose of the settlement program is to negotiate settlements of civil tax matters in dispute consistent with a reasonable evaluation of the costs and risks associated with the litigation of these matters. The settlement program should be distinguished from the Franchise Tax Board's Offer in Compromise program. If a taxpayer is only seeking relief from the further obligation to pay an undisputed tax liability based on an inability to pay, the taxpayer should contact the Offer in Compromise program at (916) 845-4787.

Under the provisions of Revenue and Taxation Code §19442, the Franchise Tax Board has authority to settle civil tax matters in dispute as follows:

Approval of settlements by the Franchise Tax Board: The Executive Officer, or the Chief Counsel of the Franchise Tax Board if authorized by the Executive Officer, may recommend to the Franchise Tax Board, itself, a settlement of any civil tax matter in dispute. Any such recommendation must first be submitted to the Attorney General. Within 30 days following receipt of a recommendation, the Attorney General is required to review the recommendation and advise in writing of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The members of the Franchise Tax Board must approve or disapprove the settlement recommendation within 45 days of the submission of the recommendation to the Board. Disapproval must be made by majority vote of the members of Franchise Tax Board. Franchise Tax Board meetings to consider settlements are conducted in closed session.

Approval of small case settlements: Revenue and Taxation Code §19442 also allows the Executive Officer and the Chief Counsel of the Franchise Tax Board, jointly, to approve the settlement of any civil tax matter in dispute involving a reduction in tax or penalties, the total of which reduction of tax and penalties does not exceed five thousand dollars (\$5,000). When such small case settlements are approved, the Executive Officer is required to notify the members of the Franchise Tax Board.

Whenever a reduction in tax or penalties, or total tax and penalties, in excess of five hundred dollars (\$500) is approved, a public record statement will be placed in the office of the Executive Officer of the Franchise Tax Board with respect to that settlement which will contain only the following information:

- 1) The name or names of the taxpayers who are parties to the settlement
- 2) The total amount in dispute
- 3) The amount agreed to pursuant to the settlement
- 4) A summary of the reasons why the settlement is in the best interests of the State of California
- 5) For any settlement approved by the Franchise Tax Board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective

Except for the public notices described above, settlements are considered confidential tax information. All settlements entered into pursuant to Revenue and Taxation Code §19442 are final and nonappealable except upon a showing of fraud or misrepresentation of a material fact.

Any taxpayer desiring to initiate settlement of a civil tax matter in dispute must submit a written request, which must include the following information:

- 1) Taxpayer's name and current address
- 2) Representative's name, current address, fax and telephone number
- 3) Taxpayer's Social Security or taxpayer identification number
- 4) Tax or income year(s) involved
- 5) Tax amount involved
- 6) Present status of dispute (i.e., protest, appeal, or claim for refund)
- 7) Copy of representative's power of attorney (FTB form 3520)
- 8) Good faith settlement offer, including the factual and legal grounds in support of the offer

All requests for settlement consideration are reviewed by the Settlement Bureau staff to determine if the cases are proper candidates for settlement consideration. After reviewing the taxpayer's file and the required foregoing information, including the taxpayer's good faith settlement offer, the Settlement Bureau staff will contact the taxpayer or the taxpayer's representative with its determination as to whether the case will be accepted into the settlement program. If it is determined that there is a bona fide factual or legal dispute, a case will generally be accepted into the settlement program. However, settlement is discretionary. Upon review, a case may be rejected for a variety of reasons. For example, if the Settlement Bureau staff perceive a negligible litigation risk to FTB's position in the case,

or if the case hasn't been sufficiently factually developed to allow proper settlement consideration, the case would not likely be accepted into the settlement program.

The settlement program is intended to provide taxpayers with an expedited method of resolving civil tax matters in dispute. It is expected that tentative settlements (subject to the approval of the Franchise Tax Board, itself, or, for small case settlements, the Executive Officer and Chief Counsel) will be reached in all cases accepted into the Settlement Bureau within a period of time not exceeding 9 months following the receipt of the taxpayer's initial written request for settlement consideration, including the taxpayer's good faith settlement offer. Except with the approval of the Chief Counsel, cases in which tentative settlements have not been reached within the 9 month time frame will be removed from settlement consideration and returned to their pre-settlement status (i.e., protest, appeal, or claim for refund).

When a tentative settlement has been agreed to between a taxpayer and the Settlement Bureau staff, the taxpayer must execute a written settlement agreement setting forth the terms of the proposed settlement. The settlement agreement becomes effective upon approval of the settlement by the members of the Franchise Tax Board or, for small case settlements, when approved by the Executive Officer and Chief Counsel. If the tentative settlement requires payment by the taxpayer, the taxpayer will generally be required to deposit the full settlement amount prior to such approval being obtained.

Taxpayers seeking additional information or desiring to initiate settlement of their civil tax matters in dispute should call or write (providing the required information set forth above) to:

Ms. Caglar Caglayan
Director, Settlement Bureau
Franchise Tax Board
P.O. Box 3070
Rancho Cordova, CA 95741-3070
Telephone: (916) 845-4334
Fax: (916) 845-4747

Drafting Information

The principal author of this notice is G. Anthony Tessier, Jr., Senior Tax Counsel of the Franchise Tax Board, Legal Branch, Settlement Bureau. For further information regarding this notice, contact G. Anthony Tessier, Jr. at the Franchise Tax Board, Legal Branch, Settlement Bureau, P.O. Box 3070, Rancho Cordova, CA 95741-3070, (916) 845-6466.